

## **REMARKS/ARGUMENTS**

Applicants have received and carefully reviewed the Office Action of the Examiner mailed October 28, 2008. Currently, claims 1, 3, 4, 6-15, and 21-23 remain pending and claim 15 has been withdrawn from consideration. Claims 1, 3, 4, 6-14, and 21-23 have been rejected. In this amendment, claims 1 and 23 have been amended, and claims 26-29 are newly presented. Support for the amendments may be found in the specification (for example: page 8, line 21 to page 9, line 6, and page 9, line 21 to page 10, line 8) and the drawings. No new matter has been added. Favorable consideration of the above amendments and the following remarks is respectfully requested.

### ***Claim Rejections - 35 USC § 103***

Claim 23 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Wholey et al. (U.S. Published Patent Application No. 2003/0176886). Applicants respectfully traverse the rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

Wholey et al. do not appear to disclose or even contemplate a guidewire slidably disposed within the shaft lumen and passing through the proximalmost aspiration port. In fact, Wholey et al. do not appear to disclose a guidewire passing through any opening in the side wall of the shaft lumen.

Since Wholey et al. do not appear to disclose each and every element of claim 23, Applicants submit that claim 23 is patentable over Wholey et al. Withdrawal of the rejection is respectfully requested.

Claims 1, 3, 4, 6-14, 21, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wholey et al. in view of Stack et al. (U.S. Patent No. 4,867,156). Applicants respectfully traverse the rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03). “If the proposed modification or combination of the prior art

would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).” (MPEP 2143.02 VI).

The Examiner admits that Wholey et al. do not disclose an operable end cap. The Examiner asserts that Stack et al. disclose an operable end cap that may be combined with Wholey et al. to arrive at the claimed invention. Applicants respectfully disagree, particularly in view of the current amendment adding the limitation that the end cap is “fixedly attached” to the distal end of the elongated shaft, as recited in independent claim 1. Clearly the end cap of Stack et al. is not and cannot be fixedly attached to the distal end of the shaft because it requires movement away from the end of the shaft in order to properly perform its functions. Since the device disclosed by Stack et al. does not disclose the claimed end cap, and modification of the Stack et al. device in order to arrive at the claimed end cap would change the principle of operation of the Stack et al. end cap, Applicants submit that Stack et al. cannot render independent claim 1 obvious.

As discussed above, independent claim 1 is believed to be allowable over the cited combination of references. Since claims 3, 4, 6-14, 21, and 22 depend therefrom and add additional elements thereto, Applicants submit that claims 3, 4, 6-14, 21, and 22 are also allowable over the cited references and respectfully request that the Examiner withdraw the rejection.

### ***Newly Presented Claims***

Newly presented claims 26-29 are believed to be patentable over the cited combination of Wholey et al. and Stack et al. These claims depend from independent claim 1, (which as discussed above is believed to be patentable) and add additional elements thereto. None of the cited references (alone or in combination) appear to disclose the limitations presented in these claims. Favorable consideration is respectfully requested.

***Conclusion***

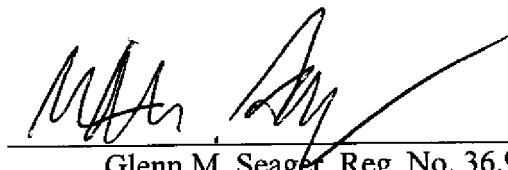
In view of the foregoing, all currently pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Robert M. Rauker et al.

By their Attorney,

Date: Jan. 26, 2009

A handwritten signature in black ink, appearing to read 'G. M. Seager', is written over a horizontal line.

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